

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

JOSEPH WHITTAKER
1479 Jennifer Dr.
Jackson, MO 63755

Plaintiffs,

vs.

AMERICA'S CAR-MART INC.,
AN ARKANSAS CORPORATION,
Serve: CSC- Lawyers Incorporating Service
(Registered Agent)
221 Bolivar Street
Jefferson City, MO 65101

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, the Plaintiff, Joseph Whittaker, by and through his attorney, Michael L. Jackson of the Law Offices of Jackson and Welker, LC and for his Complaint against the Defendant, America's Car-Mart, Inc. states:

NATURE OF THE ACTION

1. This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to the Plaintiff, Joseph Whittaker, who was adversely affected by such practices.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA" or "statute"), 42 U.S.C. § 12117(a), which

incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e-5(f)(1) and (3) and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3. The unlawful employment practices alleged herein were committed within the judicial district of this Court.

PARTIES

4. Plaintiff Joseph Whittaker is a resident in the County of Cape Girardeau, State of Missouri, which is in this judicial district.

5. At all relevant times, Defendant, America’s Car-Mart, Inc., has continuously been a for-profit corporation organized under the laws of the State of Arkansas, doing business within the State of Missouri, and has continuously had at least 15 employees.

6. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

7. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

8. At least since August of 2012, Defendant has engaged in conduct in the City and County Cape Girardeau, Missouri, which violates the ADA.

9. All conditions precedent to the institution of this lawsuit have been fulfilled, in that: a joint charge of employment discrimination was filed by this Plaintiff with the Equal Employment Opportunity Commission and the Missouri Commission on Human Rights within 180 days of the commission of the unlawful employment practices herein complained of;

notification of right to sue was received by this Plaintiff from the Equal Employment Opportunity Commission and the Missouri Commission on Human Rights; and this complaint has been filed within (90) days of this Plaintiff's receipt of the notification of right to sue from the Equal Employment Opportunity Commission.

10. Plaintiff Joseph Whittaker was at all times relevant a qualified individual with a disability within the meaning of the ADA.

11. At all times relevant to this action, Plaintiff Joseph Whittaker had severe obesity, which is a physical impairment within the meaning of the ADA, and which Defendant regarded as such an impairment.

12. Plaintiff Joseph Whittaker began working for Defendant in August, 2005 and Defendant discharged Plaintiff from Plaintiff's position of "General Manager" on or about November 1st, 2012.

13. At the time of the discharge, Defendant regarded Plaintiff Joseph Whittaker as being substantially limited in one or more major life activities, including but not limited to walking, as a result of Plaintiff's obesity.

14. Plaintiff Joseph Whittaker was, at all times relevant, able to perform the essential functions of his position with Defendant, with or without accommodation.

15. Defendant terminated Plaintiff Joseph Whittaker's employment because of Plaintiff's disability, within the meaning of the ADA, in violation of the statute.

16. The practices complained of herein deprived Plaintiff Joseph Whittaker of equal employment opportunities by denying Plaintiff a job because of Plaintiff's disability.

17. The unlawful employment practices complained of herein were committed with malice or with reckless indifference to Plaintiff Joseph Whittaker's federally protected rights.

18. The unlawful employment practices complained of herein were intentional.

19. The unlawful employment practices complained of herein caused Plaintiff Joseph Whittaker to suffer economic injuries, including but not limited to lost wages, as well as nonpecuniary injuries.

PRAYER FOR RELIEF

Wherefore, the Plaintiff respectfully requests that this Court:

- A. Order Defendant to make Plaintiff Joseph Whittaker whole by providing compensation for past pecuniary losses including back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices.
- B. Order Defendant to make Plaintiff Joseph Whittaker whole by providing compensation for past nonpecuniary losses resulting from the unlawful practices complained of above, including but not limited to emotional and mental anguish, pain and suffering, humiliation, loss of enjoyment of life, and devastation, in amounts to be determined at trial.
- C. Order Defendant to pay Plaintiff Joseph Whittaker punitive damages for its malicious and reckless conduct, as described hereinabove, in amounts to be determined at trial.
- D. Grant such further legal or equitable relief as the Court deems necessary and proper.
- E. Award the Plaintiff Joseph Whittaker its costs of this action.

JURY TRIAL DEMAND

In accordance with Rules 38 and 39 of the Federal Rules of Civil Procedure, Plaintiff Joseph Whittaker hereby requests a jury on all issues raised in the instant Complaint which may be tried by jury.

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